

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of

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HARVARD GRADUATE STUDENT UNION – UAW

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Petitioner

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Case No. 01-RC-186442

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and

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PRESIDENT AND FELLOWS OF HARVARD
COLLEGE

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Employer.

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**EMPLOYER’S MOTION TO STAY PROCEEDINGS PENDING
THE BOARD’S DECISION ON HARVARD’S REQUEST FOR REVIEW**

Pursuant to 29 CFR § 102.69 and § 102.67(j) of the National Labor Relations Board’s Rules and Regulations, President and Fellows of Harvard College (“Harvard”), hereby respectfully moves for a stay of all of the proceedings ordered by the Regional Director in his Decision and Direction of Second Election including, *inter alia*, (1) the opening of contested ballots and, (2) the conditional direction of a second election if the Union still loses the first.

Harvard’s request for a stay, pending a decision by the Board regarding Harvard’s Request for Review, is necessary under the particular circumstances of this case, for the following reasons:

- 1) On November 16 and 17, 2016, Region One of the NLRB conducted an election at Harvard pursuant to a Petition for Representation filed on October 18 by the Harvard Graduate Students Union – United Auto Workers (“Union”);
- 2) The Union lost the election 1,456 ballots to 1,272 ballots, with 314 unresolved challenged ballots (a number which was reduced from nearly 1,200 prior to the hearing);

- 3) On December 29, 2016, the Petitioner filed Objections to the Election in which it contended that the election should be set aside and a new election ordered because the University “failed to substantially comply with the Board’s Excelsior rule, 29 C.F.R. Section 102.62(d) by failing to provide an accurate list of all eligible voters[]”;
- 4) After an 11-day hearing and the issuance of the Hearing Officer’s Report and Recommendations, the Regional Director, in mostly affirming the Report, ordered that the remaining challenged ballots, which constitute a determinative number, be opened. The Regional Director similarly directed a second election if the Union still loses the first election after opening of challenged ballots. The Regional Director also affirmed several improper evidentiary decisions made by the Hearing Officer which adversely affected Harvard’s ability to present its case;
- 5) Due to the Regional Director’s substantial departure from Board precedent in support of his determinations concerning the eligibility of certain voters and his directing of a second election, and because there are compelling reasons for reconsideration of an important Board policy concerning certain evidentiary rulings, Harvard filed a Request for Review;
- 6) Given how large the electorate would be in a rerun election, the myriad of issues arising during the first election (including over a thousand challenged ballots which would likely occur again), and the substantial resources already expended by the Parties and the Board to this point, in the interest of economy and administrative efficiency, the Board should stay the proceedings at the Region until the Board has the opportunity to rule on the issues raised by Harvard’s Request – which should result in overturning the Regional Director’s Decision, averting the need for a second election;
- 7) Additionally, given the several different categories of challenged voters, if ballots are opened prior to the Board’s final determination on the challenges, there is no reasonable way to segregate the various categories of challenged ballots. If the Board ultimately finds that some or all of the challenged ballots should *not* have been counted, the privacy rights of some or all of the voters will be severely compromised;
- 8) Lastly, Counsel from the undersigned’s office conferred with a representative of Region One on July 12, 2017, who confirmed that the Region will not open ballots while a determinative number of challenge ballots remain subject to Board review, and thus, Harvard is simply seeking similar confirmation from the Board.

THEREFORE, for the reasons stated above, Harvard respectfully requests that the Board issue a stay on all proceedings ordered and directed by the Regional Director in his Decision, until the Board rules on its Request for Review and the substantial questions and issues raised within.

Respectfully submitted,

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE

By its attorneys,

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Dated: August 4, 2017

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2017, a true and accurate copy of the above document was served, by electronic mail, upon counsel for Petitioner and the Regional Director, Region One:

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